

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 96-4714

IVAN L. HAIRSTON,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Virginia, at Roanoke.
Samuel G. Wilson, Chief District Judge.
(CR-92-85)

Submitted: May 15, 1997

Decided: June 4, 1997

Before RUSSELL, HALL, and HAMILTON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Bruce A. Flora, Boones Mill, Virginia, for Appellant. Robert P.
Crouch, Jr., United States Attorney, Joseph W. H. Mott, Assistant
United States Attorney, Tracy Taylor, Third Year Law Intern, Roa-
noke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Ivan L. Hairston was convicted of drug and firearm offenses, including using or carrying a firearm during and in relation to a drug trafficking offense in violation of 18 U.S.C. § 924(c) (1994). He was sentenced to a term of 147 months imprisonment. Following the Supreme Court's decision in Bailey v. United States, ___ U.S. ___, 64 U.S.L.W. 4039 (U.S. Dec. 6, 1995) (Nos. 94-7448/7492), Hairston filed a motion pursuant to 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997), seeking to have his § 924(c) conviction vacated. The government agreed that the conviction should be vacated.

The district court then resentenced Hairston on the remaining counts, adding an enhancement for possession of a firearm during a drug offense. United States Sentencing Commission, Guidelines Manual, § 2D1.1(b)(1) (Nov. 1995). Hairston objected to the enhancement, arguing that the court lacked jurisdiction to resentence him for convictions which he had not challenged and that a sentence enhancement violated double jeopardy. The district court overruled his objection and sentenced him to a term of 108 months imprisonment. Hairston appeals, alleging constitutional error and contending that the district court erred in failing to hear evidence concerning the guideline enhancement. Finding no error, we affirm.

We recently decided the issue raised here in United States v. Hillary, 106 F.3d 1170 (4th Cir. 1997), holding that the district court has jurisdiction to resentence a defendant on a surviving drug conviction after he has been granted relief from a § 924(c) conviction in light of Bailey. Moreover, in response to an inquiry from the district court, Hairston's attorney conceded that the enhancement applied.

We therefore affirm the sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED